THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.23490 OF 2006

Dated 6.12.2006

Between

Hindustan Aeronautic Employees
Cooperative Housing Society Limited,
TBC No.269, Office at Sy.No.77,
Hafeezpet village, Serilingampalli(v)
Rangareddy District.

.. Petitioner

AND

Sirla Builders Private Limited,
Sirla Towers, Hydernagar, Kukatpalli,
Hyderabad represented by its Managing Director,
P.Suryanarayana Raju and two others.

.. Respondents

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W.P.NO.23490 OF 2006

ORDER: (Per Sri TCSR.J)

The order dated 24.2.2006 passed by the learned Special Court in I.A.No.85 of 2006 in L.G.C.No.17 of 2004 is now being assailed in the instant writ petition by seeking a writ of Certiorari.

The writ petitioner is the applicant in the main L.G.C.No.17 of 2004. It filed the interlocutory application seeking appointment of a Commissioner for localization. The land in dispute, in an extent of Ac.2.62 guntas covered by Survey No.77 of Hafeezpet Village, is alleged to have been grabbed. For recovery of the same L.G.C.No.17 of 2004 has been filed. That application has been resisted by the respondents herein on the premise that the application schedule land is situate in Hydernagar Village and is covered by Survey Nos.158, 159 and 162 but not in Survey No.77 of Hafeezpet Village. In view of the rival contentions which seemed to be diametrically opposite in the perception of the applicant, it requires elucidation by appointing a Commissioner and for that purpose, the petitioner filed I.A.No.85 of 2006 seeking appointment of a Commissioner.

The learned Special Court after having heard either side and

considering the evidence, held that the disputed land is situated in a triangular portion, as shown in the sketch, as admitted by P.W.1 inter alia in his deposition, and therefore it does not warrant in any appointment of a Commissioner and upheld the rival contention that such appointment would amount to fishing out evidence and for that purpose, a Commissioner should not be appointed and eventually dismissed the application as aforesaid.

It is no matter whether the disputed land is in a triangular portion or rectangular portion. Having regard to the rival contentions, the question germane for consideration is whether the disputed land is covered by Survey No.77 of Hafeezpet Village or is covered by Survey Nos.158, 159 and 162 of Hydernagar Village.

In the counter filed by the respondents, inter alia an objection for the appointment of the Commissioner has been taken. The grounds mentioned therein in support thereto seem to be that there is no dispute as regards the identity of the land which is in a triangular shape and therefore it does not warrant any appointment of a Commissioner and the application is designedly calculated to protract and to procrastinate the proceedings before the Court and that even otherwise the Mandal Revenue Officer submitted his report under Rule 6 of the Rules framed under the Act and if necessary, the MRO can be summoned and examined.

From the rival contentions, it is obvious that the identity of the land is not in dispute. As admitted by P.W.1 in his evidence, inter alia, it is a triangular bit. Admittedly, Hafeezpet and Hydernagar are border villages and fall within two municipalities. As per the respective contentions of the

parties, they are covered by different survey numbers and situate in different villages. Having regard to these rival contentions, it is not the question of identity of land that is germane nor it is a question as sought to be contended by the learned counsel for the respondents that it is in respect of the shortage of land of Ac.2.00 from the entire extent of Ac.62.06 guntas. Essentially the dispute lies as to whether it is situated in Hafeezpet Village in the border or in Hydernagar Village in the border. It may be mentioned here that even after the survey and submission of the report by the surveyor to the Court, still the applicant has to prove his title to the land in dispute albeit it is shown to have been covered by Survey No.77 of Hafeezpet Village. The survey report, as observed by us herein above, has the effect of elucidating the fact and certainly it is not in the nature of evidence, which may, eventually upheld the contentions of either of the parties. Such elucidation is required for effective adjudication of the matter.

Sri Vijayasen Reddy, learned counsel appearing for the respondents seeks to vehemently contend that although the impugned orders were passed way back in the month of February, the applicant did not approach this Court and purposefully delayed the matter by resorting to file the so called clarification petition before the Apex Court so as to gain time and these delaying tactics cannot be countenanced by Courts of law. The learned counsel further represents that in the cross examination of P.W.1, he clearly admitted that the land in dispute is a triangular bit and he could not give any answer as to what happened to the deficit Ac.2.00 of land and the present application is calculated to see that the effect of the cross-examination is nullified.

We are afraid that we may not countenance both the

representations sought to be made by the learned counsel. What is the total extent of the land covered by Survey No.77 is not germane for consideration. Whether there has been any shortage in the total extent of land covered by Survey No.77 is again not germane for consideration. Title has been set up to the land in dispute by the applicant and the applicant may succeed or fail wholly in proving the title or failure to prove the same. The admission on the part of P.W.1 that it is a triangular portion, in our considered view, will not help the Court to decide as to whether the land in dispute is situated in Survey No.77 of Hafeezpet Village or Survey Nos.158, 159 and 162 of Hydernagar Village. Localisation, as is envisaged under Rule 9 of Order 26 of the Code of Civil Procedure is meant for such elucidation of facts. It cannot be understood as trying to fish out evidence. Therefore, we are of the considered view that the fact situation obtaining in the instant case warrants the appointment of a Commissioner. Thus, we see error of jurisdiction that has been committed by the learned Special Court in the instant case.

For the above reasons, the writ petition is allowed and the impugned order is hereby set aside. The matter is remitted to the Special Court for appointment of a Commissioner.

T.CH.SURYA RAO,J

G.CHANDRAIAH, J

Dt.6.12.2006
msv.